

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 03-01**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of the use tax to the distribution of catalogs from outside of Tennessee into Tennessee.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- A. The taxpayer must not have misstated or omitted material facts in the transaction;
- B. Facts that develop later must not be materially different from the facts upon which the ruling was based;
- C. The applicable law must not have been changed or amended;
- D. The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- E. The taxpayer directly involved must have acted in good faith in relying upon the ruling, and a revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[THE TAXPAYER] is in the retail mail order catalog business. In addition to the products that are shipped into multiple states, catalogs from the taxpayer also are shipped into multiple states. The taxpayer hires another party to print catalogs. The catalogs are printed in Tennessee but assembled, addressed and mailed from outside of Tennessee. The other party bills the taxpayer from the Tennessee location.

QUESTION

What is the taxpayer's liability for use tax on the catalogs?

RULING

The taxpayer must pay the use tax on the cost price of the catalogs that are distributed to residents of Tennessee.

ANALYSIS

The following statutory provision applies to the transactions at issue:

A tax, which shall be paid by the distributor, is also levied at the rate set out in subsection (a) on the value of catalogs, advertising fliers, or other advertising publications distributed to residents of Tennessee; provided, that this tax shall not be duplicative of a sales or use tax otherwise collected on such publications.

"Distributor" does not include the commercial printer or mailer of any such catalogues, advertising fliers, or other advertising publications; nor shall nexus to a taxpayer be established through a relationship with a commercial printer or mailer having a presence in Tennessee; nor shall the commercial printer or mailer have the obligation of collecting any such tax. Tenn. Code Ann. § 67-6-203(b). See also *J.C. Penney Company v. Olsen*, 796 S.W.2d 943 (Tenn. 1990).

The word "value" in Tenn. Code Ann. § 67-6-203(b) has the same meaning as "cost price" in Tenn. Code Ann. § 67-6-203(a). *Rivergate Toyota, Inc. v. Huddleston*, 1998 WL 83720 (Tenn. Ct. App.). "'Cost price' means the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever[.]" Tenn. Code Ann. § 67-6-102(6).

The taxpayer must pay the use tax on the cost price of the catalogs that are distributed to residents of Tennessee. Tenn. Code Ann. § 67-6-203(b).

Steve Butler
Tax Counsel

APPROVED: Loren L. Chumley
Commissioner of Revenue

DATE: 2-14-03